

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**NATURAL LIFE, INC. D/B/A HEART AND  
WEIGHT INSTITUTE,**

**Case No. 28-CA-181573**

**and**

**MYEASHA STRAIN, an individual**

**NATURAL LIFE INC. D/B/A HEART AND WEIGHT INSTITUTE'S REPLY BRIEF TO  
GENERAL COUNSEL'S ANSWERING BRIEF**

Respectfully submitted,

Howard & Howard Attorneys PLLC

/s/ Robert Rosenthal

Robert L. Rosenthal, Esq.

Jennifer R. Lloyd, Esq.

3800 Howard Hughes Parkway, Suite 1000

Las Vegas, NV 89169

Tel: (702) 667-4809

Fax: (702) 567-1568

Email: rrosenthal@howardandhoward.com

jllloyd@howardandhoward.com

*Attorneys for Respondent, Natural Life, Inc.*

*d/b/a Heart and Weight Institute*

Respondent, Natural Life, Inc. d/b/a Heart and Weight Institute (hereinafter “Natural Life” or “Respondent”), hereby submits, by and through its Undersigned Counsel, this Reply Brief in to General Counsel’s Answering Brief.

## **I. INTRODUCTION**

With its exceptions, Natural Life urges the Board to consider the evidence presented at the hearing in *totality*, including the evidence erroneously excluded by Administrative Law Judge Ira Sandron (the “ALJ”) (proposed Exhibit 3 and testimony related thereto), and conclude that the ALJ erred in finding that Natural Life engaged in unfair labor practices in violation of Section 8(a)(1) of the National Labor Relations Act (the “Act”). The record does not support the finding that Natural Life discharged and refused to recall its employees due to their protected concerted activities nor does it support the ALJ’s exclusion of Exhibit 3. As such, Natural Life’s exceptions should be sustained and the allegations against Natural Life dismissed.

## **II. ARGUMENT**

### **A. GUGGIA WAS NOT VESTED WITH ACTUAL OR IMPLIED AUTHORITY**

The General Counsel erroneously claims that Natural Life ignored the fact that its owner, Konstantin Stoyanov (“Stoyanov”), provided Guggia with *actual* authority to terminate the sales employees on July 27.<sup>1</sup> However, General Counsel ignores the substance of Stoyanov’s quoted testimony in its Answering Brief when it argues, without any evidence in support, that Guggia’s authority extended *beyond* what he expressly instructed her to do – terminate the sales employees on July 27. (Transcript, p. 543:15-21.) However, Stoyanov’s testimony clearly establishes that

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<sup>1</sup> It is not disputed that Guggia was not a supervisor on July 27, and General Counsel stated such on the record at the hearing. Transcript, p. 448, ln. 1-3.

Guggia's authority was limited solely to terminating the sales employees on July 27. Guggia was not empowered to speak for management and did not have a supervisory role on July 27. Guggia's work duties and responsibilities are not extraneous facts, as General Counsel contends, but are directly relevant to how the sales employees viewed her role at Natural Life. Therefore, the ALJ had no basis to disregard the limited authority given to Guggia in finding that she "was vested with actual and apparent authority when she conducted the July 27 meeting with employees and told them they were terminated." (Decision, p. 115:39-40.)

Further, the General Counsel alleges that because Guggia could hire employees on August 1, it supports the ALJ's finding that Guggia could speak on behalf of Natural Life on July 27. This argument simply does not make sense. Guggia's role after the July 27 meeting has no bearing on the authority given to her to terminate the sales employees on July 27. It is undisputed that she was not a supervisor on July 27. Stoyanov's testimony clearly establishes that Guggia only had authority to terminate the sales employees—nothing more. She was not instructed to communicate anything else on behalf of Natural Life to the sales employees at that meeting and the General Counsel offers no other citations to the record in its Answering Brief that indicates that Guggia had some additional authority. Stoyanov's testimony and the evidence presented at the hearing simply do not support the General Counsel's argument.

Additionally, the Answering Brief falsely maintains that Natural Life's Brief relies on "extraneous facts" concerning Guggia's work duties in arguing that she did not have authority to speak on behalf of Natural Life. This contention, however, is hypocritical because, in the same breath, General Counsel asserts that Guggia's work duties establish that she had actual authority. Furthermore, if Guggia's work duties are indeed extraneous facts and not relevant to whether she had authority on July 27, then the Board must disregard the ALJ's findings that rely upon Guggia's

duties, which only further supports the exceptions raised by Natural Life. However, if Guggia's work duties are considered, the record demonstrates that Guggia was simply a bumper, and never had authority to hire, give assignments, or discipline employees at any relevant time—particularly on July 27. The ALJ's conclusion Guggia had authority because of her previous role or other duties at Natural Life disregards these key facts and is not supported by the record.

The ALJ also incorrectly imputed the fact that when Guggia made statements other than those concerning termination on July 27, she must have been vested with authority to make those remarks as well. However, the ALJ made leap in logic without any corroborating evidence. The record is clear and is actually supported by the General Counsel's citation to Stoyanov's testimony in its Answering Brief, which establishes that Guggia's authority on July 27 was limited to terminating the sales employees. Because Guggia did not have authority on July 27 beyond communicating that the sales employees were terminated, the ALJ's finding that Guggia was vested with actual and apparent or implied authority, such that her statements beyond the termination should be imputed to Natural Life, is simply not supported by the record and General Counsel does not present evidence to the contrary in its Answering Brief.

**B. RESPONDENT'S EXHIBIT 3 AND RELATED TESTIMONY SHOULD NOT HAVE BEEN EXCLUDED**

Natural Life does not seek to have the Board condone tactical noncompliance with a Board subpoena. Instead, Natural Life submits that the ALJ should have considered the prejudicial effect of his ruling on Natural Life's defenses, and concluded that no prejudice would be suffered by the admission of a one-page document and the allowance of testimony concerning the financial basis for the termination of the sales employees on July 27, which was absolutely critical to Natural Life's defense. The enforcement of the Board's subpoena power should be balanced with the prejudicial effect that exclusion of all evidence related to a key relevant defense would have against

Natural Life. The fact that the the ALJ failed to even engage in such an analysis in his decision demands reversal.

Natural Life's delayed compliance or alleged noncompliance with the Board's subpoena did not warrant exclusion of this evidence. The Board can impose a variety of sanctions to deal with subpoena noncompliance. See *Copper River of Boiling Springs, LLC*, 2013 WL 5375236 (NLRB 2013). General Counsel's argument that permitting the one page document and related testimony would somehow open the floodgates for other respondents to ignore Board subpoenas is simply without merit, is purely speculative, and is unsubstantiated. General Counsel never made any representation as to how the Charging Party would be prejudiced by the admission of this evidence and Natural Life's one-day delay in providing the document did not warrant such a harsh sanction.

By precluding consideration of Respondent's Exhibit 3 and testimony concerning the financial reasons why Natural Life had no choice but to discharge of the sales employees, the ALJ gutted Natural Life's key defense to the allegations, namely that the employees were terminated solely because the sales room was losing money and not as a response to their complaints.<sup>2</sup> General Counsel fails to establish in its Answering Brief that exclusion of this evidence was warranted in this matter.

**C. NO ADVERSE INFERENCE SHOULD HAVE BEEN DRAWN FROM NATURAL LIFE NOT CALLING JOHN FINLEY AS A WITNESS**

General Counsel argues that the ALJ's invocation of the missing witness rule and the accompanying adverse inference was warranted because the ALJ discredited the testimony of

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<sup>2</sup> In fact, Stoyanov testified that the sales employees had always complained, and he did not take any adverse employment action against them. Further, Strain, the Charging Party, even testified that she had vocally complained about the same issues for several years—without repercussion.

Stoyanov and Guggia. The General Counsel further asserts that their testimony concerning Finley was unsubstantiated and uncorroborated. However, even without addressing the credibility determination, Stoyanov and Guggia both testified that they believed Finley was looking for another job and was not coming back to work at the time of the termination of the sales employees. This testimony was even referenced by the ALJ in his decision. (Decision, p. 6:15-18.) It is difficult to believe that in order to further substantiate this fact, Natural Life was required to attempt to call a former employee or face an adverse inference. Natural Life presented testimony concerning key facts, which was disregarded simply because Natural Life decided not call a former employee that was not within its control.

The ALJ further supported its adverse inference by claiming that Finley's last date of employment was unknown, again disregarding Stoyanov's undisputed testimony that Finley picked up his check on July 28, the day after the meeting. Because Mr. Stoyanov's testimony regarding Finley was not disputed, the ALJ had no basis to conclude that Finley's last date of employment and the circumstances surrounding his departure were unknown.

Finley was not a "missing witness" and the ALJ's invocation of the rule was clear error. Nonetheless, even if General Counsel's argument is deemed correct, the ALJ's credibility determination did not require a further sanction in the form of "appropriate adverse inferences." (Decision, p. 7:7.) The ALJ's failure to identify these "appropriate adverse inferences" also warrants reversal.

**D. NATURAL LIFE DID NOT TERMINATE THE SALES EMPLOYEES FOR ENGAGING IN PROTECTED CONCERTED ACTIVITY**

The ALJ's conclusion that the employees were terminated for engaging in protected concerted activity is simply not supported by the record. The General Counsel failed to present any direct or circumstantial evidence that Natural Life disciplined or terminated any of the

employees for complaining about the terms and conditions of their employment as required by *Wright Line*, 251 NLRB 1083 (1980).

General Counsel argues that the stipulation that the employees were complaining about terms and conditions of employment in conjunction with Guggia's statements at the July 27 meeting establish that Natural Life had knowledge of protected concerted activities and exhibited animus toward the employees that engaged in those activities. However, the record reflects that Natural Life's employees repeatedly complained about the same issues repeatedly over a matter of years, including but not limited to, chargebacks, paycheck deductions, and sexism in the workplace. (Decision p. 12:20-25.) It also indicates that prior to July 27, Natural life did not discipline or terminate a single employee for making such complaints, even though Natural Life was aware of the employees' complaints in this regard. Further, as was set forth above and in Natural Life's Brief in support of its exceptions, Guggia's statements at the meeting, outside of communicating the terminations, should not be imputed to Natural Life, as she did not have authority to speak on behalf of Natural Life. Therefore, the ALJ's and the General Counsel's reliance on those statements to establish animus simply is nothing more than a conclusory allegation. The fact that the employees were complaining about the terms and conditions of employment on its own is not enough to satisfy *Wright Line*.

Even if the General Counsel had satisfied the *Wright Line* test, an employer can rebut the presumption by demonstrating that its actions were motivated by a legitimate business reason, or show that the same action would have occurred despite the absence of the protected conduct. *Id.* at 1088; *see also Palms Hotel & Casino*, 344 NLRB 1363, 1363 (2005). Here, the ALJ's decision to exclude Respondent's Exhibit 3 and related testimony prevented Natural Life from presenting evidence concerning the financial reasons for the termination of the sales employees. This

exclusion was in error, as discussed above, and precluded Natural Life from presenting its key defense, namely that the terminations were warranted due to the poor performance of the sales employees. Even though the ALJ found this argument unpersuasive, given that he did not allow testimony concerning this defense, it is difficult to see how he could have fully considered the financial reasons for the discharges, as argued by General Counsel. Finally, rehiring a small portion of the sales employees is not sufficient to establish animus or support the ALJ's decision, and the General Counsel did not submit evidence that only employees that had not engaged in protected concerted activities were rehired after August 1.

#### **IV.** **CONCLUSION**

For all of the reasons set forth above, Natural Life respectfully requests that the Board sustain Respondent's Exceptions in their entirety, and dismiss the Complaint.

Dated: June 28, 2017

Respectfully submitted,

Howard & Howard Attorneys PLLC

/s/ Robert Rosenthal  
Robert L. Rosenthal, Esq.  
Jennifer R. Lloyd, Esq.  
3800 Howard Hughes Parkway, Suite 1000  
Las Vegas, NV 89169  
Tel: (702) 667-4809  
Fax: (702) 567-1568  
Email: rrosenthal@howardandhoward.com  
jlloyd@howardandhoward.com  
*Attorneys for Respondent, Natural Life, Inc.*  
*d/b/a Heart and Weight Institute*



## CERTIFICATE OF SERVICE

I hereby certify that Respondent, Natural Life Inc. d/b/a Heart And Weight Institute's Reply Brief to General Counsel's Answering Brief, Case 28-CA-181573, was served via E-filing and E-Mail on June 28, 2017, on the following:

Via E-Filing:

Gary W. Shinnars, Executive Secretary  
Office of the Executive Secretary  
National Labor Relations Board  
1099 14<sup>th</sup> St. NW  
Washington DC 20570

Via E-Mail:

Myeasha Strain  
6901 E. Lake Mead Blvd., Apt. 2080  
Las Vegas, NV 89156  
Velvetchimes@yahoo.com

Elise F. Oviedo, Esq.  
Counsel for the General Counsel  
National Labor Relations Board, Region 28  
300 Las Vegas Blvd. South, Suite 2-901  
Las Vegas, NV  
Elise.oviedo@nrlb.gov

/s/ Robert Rosenthal  
Robert L. Rosenthal, Esq.  
Jennifer R. Lloyd, Esq.  
3800 Howard Hughes Parkway, Suite 1000  
Las Vegas, NV 89169  
Tel: (702) 667-4809  
Fax: (702) 567-1568  
Email: rrosenthal@howardandhoward.com  
jlloyd@howardandhoward.com  
*Attorneys for Respondent, Natural Life, Inc.  
d/b/a Heart and Weight Institute*